

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WILLIAM T. WHITMAN, individually and on  
behalf of all others similarly situated,  
Plaintiff,  
v.  
STATE FARM LIFE INSURANCE COMPANY,  
an Illinois corporation  
Defendant.

No. 3:19-cv-06025-BJR

DEFENDANT'S MOTION FOR LEAVE TO  
FILE DOCUMENTS UNDER SEAL

Pursuant to Local Civil Rule 5(g), State Farm hereby moves to file under seal certain confidential documents and information that are being filed with State Farm's Opposition to Plaintiff's Motion for Class Certification and the declarations filed in connection with State Farm's Opposition. In support of its motion, State Farm states as follows:

**I. IDENTIFICATION OF DOCUMENTS AND BRIEFING TO BE SEALED**

1. Expert Report of Rebecca Kirk Fair (Exhibit A to the Declaration of Rebecca Kirk Fair)

2. Exhibit 1 to the Expert Report of Rebecca Kirk Fair: Summary of State Farm Washington Form 94030 Policyholder Data
3. Exhibit 2 to the Expert Report of Rebecca Kirk Fair: Summary of State Farm Washington Form 94030 Policyholder Data
4. Exhibit 3 to the Expert Report of Rebecca Kirk Fair: Summary of State Farm Washington Form 94030 Policyholder Data
5. Expert Report of Lauren J. Stiroh (Exhibit A to the Declaration of Lauren J. Stiroh)
6. Exhibit 3 to the Expert Report of Lauren J. Stiroh: analysis of Plaintiff's damages model that contains confidential policyholder data.
7. Exhibits 4-8 to the Expert Report of Lauren J. Stiroh: illustrations of the comparative COI rates and alleged damages for certain policies
8. Expert Report of Craig Reynolds (Exhibit A to the Declaration of Craig Reynolds)
9. Exhibit A to the Declaration of Alan Hendren: 94000 Series pricing binder
10. Exhibit B to the Declaration of Alan Hendren: State Farm's mortality table from the relevant timeframe
11. Exhibit C to the Declaration of Alan Hendren: filing package to Illinois including the nationwide actuarial memorandum.
12. Exhibit D to the Declaration of Alan Hendren: correspondence to Illinois enclosing a revised sample annual statement showing planned cost of insurance rate information and expense charges.
13. Exhibit F to the Declaration of Alan Hendren: filing package to Washington including the actuarial memorandum

- 1 14. Exhibit G to the Declaration of Alan Hendren: actuarial memorandum State Farm
- 2 submitted to New Jersey providing a description of the process that State Farm's
- 3 actuaries followed to develop the cost of insurance rates for use with the 94030 Policy
- 4 15. Exhibit J to the Declaration of Alan Hendren: 1994 version of the rate book that was
- 5 in place when Plaintiff purchased his Policy
- 6 16. Exhibit A to the declaration of Tim Crabtree: Summary of policyholder data
- 7 17. Declaration of Monica Flory
- 8 18. Exhibit 1 to the Declaration of Cari Dawson: Deposition Transcript of Plaintiff
- 9 William Whitman
- 10 19. Exhibit 3 to the Declaration of Cari Dawson: Exhibit 11 to the Deposition Transcript
- 11 of Plaintiff William Whitman (certain Annual Notices of Policy Status)
- 12 20. Exhibit 6 to the Declaration of Cari Dawson: Exhibit 15 to the Deposition Transcript
- 13 of Plaintiff William Whitman (Email communication between Plaintiff and Monica
- 14 Flory)
- 15 21. Exhibit 7 to the Declaration of Cari Dawson: Exhibit 28 to the Deposition Transcript
- 16 of Plaintiff William Whitman (Email communication from Plaintiff to himself)
- 17 22. Exhibit 9 to the Declaration of Cari Dawson: Exhibit 29 to the Deposition Transcript
- 18 of Plaintiff William Whitman (Email communication from Plaintiff to himself)
- 19 23. Exhibit 11 to the Declaration of Cari Dawson: Deposition Transcript of Plaintiff's
- 20 Expert Scott Witt.
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1       **II. SEALING IS NECESSARY TO PRESERVE THE CONFIDENTIALITY OF**  
 2       **STATE FARM’S PROPRIETARY BUSINESS INFORMATION AND TRADE**  
 3       **SECRETS AND DOCUMENTS PLAINTIFF HAS DESIGNATED**  
 4       **CONFIDENTIAL.**

5       Sealing is necessary for the documents identified in paragraphs 1-16 and 23 above  
 6       because those documents contain information that State Farm considers to be proprietary and  
 7       confidential actuarial information, as well as trade secrets pertaining to its cost of insurance rates  
 8       and business strategy. As explained below, compelling reasons support the sealing of the  
 9       documents. In addition, because the documents identified in paragraphs 17-22 convey  
 10      information in documents designated confidential by Plaintiff, Plaintiff must satisfy Local Civil  
 11      Rule 5(g)(3)(B) in its response to this motion with respect to those documents.

12       **A. Legal Standard.**

13       While courts start with “a strong presumption in favor of access to court records,” they  
 14       also “remain mindful of the parties’ right to access those same courts upon terms which will not  
 15       unduly harm their competitive interest.” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122,  
 16       1135 (9th Cir. 2003); *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214, 1228-1229 (Fed. Cir.  
 17       2013). For the relevant class certification briefing here, the proponent seeking an order sealing  
 18       them “must meet the ‘compelling reasons’ standard and not the lesser ‘good cause’  
 19       determination.” *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1177 (9th Cir. 2006)  
 20       (quoting *Foltz*, 331 F.3d at 1135). A “compelling reason” that supports sealing court records  
 21       exists “when such court files might have become a vehicle for improper purposes, such as the  
 22       use of records to gratify private spite, promote public scandal, circulate libelous statements, or  
 23       release trade secrets.” *Kamakana*, 447 F.3d at 1179 (internal quotes and citation omitted). In  
 24       evaluating a motion to seal, “courts should consider all relevant factors.” *Foltz*, 331 F.3d at  
 25       1135.

**B. The Documents Sought To Be Filed Under Seal Contain Trade Secret and Proprietary Information Regarding State Farm's Actuarial Analyses.**

The documents referenced in paragraphs 1-16 and 23 contain confidential and proprietary information involving State Farm's development of cost of insurance rates and actuarial pricing analyses that, if publicly disclosed, would result in a competitive disadvantage and negate the considerable time, expense and effort that State Farm has incurred to develop its cost of insurance rates. State Farm develops experience assumptions through analysis of multiple years of experience across a vast population of insureds. (Holzbauer Dec. in Support of Sealing ¶ 5.) State Farm takes care not to disclose its assumptions to other competitors, as it would squander the competitive advantages that State Farm derives from the careful analysis State Farm actuaries perform of company experience. (Holzbauer Dec. in Support of Sealing ¶ 5-6.) State Farm spent considerable time and effort developing its cost of insurance rates and has undertaken reasonable efforts to maintain the secrecy of this proprietary confidential information. (Holzbauer Dec. in Support of Sealing ¶ 4.)

Sealing is necessary to protect State Farm's confidential trade secret information. (Holzbauer Dec. ¶¶ 7-10). State Farm has not made the sensitive information in these documents public as it is competitively sensitive. (Root Dec. in Support of Sealing ¶ 4). Moreover, State Farm has not produced this information in litigation without first seeking protection of its trade secret, confidential information from courts. (Root Dec. in Support of Sealing ¶¶ 5-8). Whenever third parties have sought to access this information, State Farm has taken steps to prevent its public disclosure. (Root Dec. in Support of Sealing ¶ 9). This confidential information is valuable to State Farm and it would be valuable to a competitor or potential competitor. Plaintiff's counsel has not objected to sealing these materials to protect the

1 confidentiality of this information in any matter.

2  
3 **C. The Documents Sought To Be Filed Under Seal Contain Information Plaintiff Has Designated As Confidential.**

4 The documents identified in paragraphs 17-22 have been designated by Plaintiff in this  
5 litigation as confidential. State Farm's understanding from Plaintiff's counsel is that Plaintiff  
6 intends for these documents to remain confidential and should be filed under seal. It is State  
7 Farm's understanding that Plaintiff will make the showing of confidentiality and compelling  
8 reason to the Court.

9 **III. LOCAL CIVIL RULE 5(g)(3)(A) CERTIFICATION**

10 State Farm hereby certifies that it has met and conferred through counsel for Plaintiff in  
11 an attempt to reach agreement on the need to file the documents designated confidential by  
12 Plaintiff under seal, to minimize the amount of material filed under seal, and to explore redaction  
13 and other alternatives to filing under seal. Specifically, Tejas Patel and David Wohlstadter,  
14 counsel for State Farm, conferred telephonically with Matthew Lytle and David Hickey, counsel  
15 for Plaintiff, on March 26, 2021, in advance of this filing.

16 **IV. DURATION OF TIME REQUESTED**

17 State Farm requests that the briefing and documents it seeks to file under seal remain  
18 sealed unless and until they become publicly available or de-designated as "Confidential" under  
19 the existing Protective Order or by any Order of this Court.

20 **V. CONCLUSION**

21 Therefore, State Farm respectfully asks that the Court grant its motion and enter an order  
22 sealing the documents identified above.

DATED: March 29, 2021

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